

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against non-certified personnel.

RELATES TO: KRS 13B.090, 351.1041, 351.194, 352.010-352.540

STATUTORY AUTHORITY: KRS 351.025(1)(c), 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Energy and Environment Cabinet to promulgate administrative regulations he deems necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.025(1)(c) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against non-certified personnel whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary fines and other consequences upon an adjudication by the Mine Safety Review Commission that a noncertified person has committed this type of violation.

Section 1. (1) If a noncertified person commits a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary fine, in accordance with KRS 351.025(1)(c).

(2) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352, subsequent to a first offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety shall consider that adverse adjudication during its consideration of the individual's application. The Division of Mine Safety may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(3) If a noncertified person applies for a foreman's certificate, an inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352, subsequent to a second offense adjudication by the Mine Safety Review Commission that he intentionally violated, or ordered another person to violate, a mine safety law which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety shall consider that adverse adjudication during its consideration of the individual's application. After that second offense adjudication, there shall be a rebuttable presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety Review Commission and present evidence as to his suitability. The applicant shall bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The Division of Mine Safety may grant or deny the application in accordance with KRS Chapter 351 and the administrative regulations promulgated under that chapter.

(4) Upon the adjudication by the Mine Safety Review Commission of a third offense committed by a noncertified person, that person shall not be eligible to obtain or hold any mine certification within the Commonwealth of Kentucky.

(5) A noncertified person who is also an owner or part-owner of a licensed premises shall be penalized under the provisions applicable to owners and part-owners, pursuant to 805 KAR 8:040, rather than under the provisions applicable to noncertified personnel, pursuant to subsections (1) through (4) of this section. (28 Ky.R. 2131; 29 Ky.R. 715; eff. 9-16-2002; 44 Ky.R. 696, 1527; eff. 2-2-2018; Crt eff. 6-27-2018.)